

JUN 28 1990

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF NORTH CAROLINA

WARREN L. TADLOCK, CLERK  
BY:                       
Deputy Clerk

In Re:

CELIA C. WILSON,

Debtor.

) Case No. C-B-89-31560  
) Chapter 13  
)  
)  
)

JUDGEMENT ENTERED ON JUN 28 1990

**ORDER AWARDING SANCTIONS  
FOR VIOLATION OF AUTOMATIC STAY**

This matter is before the court on the debtor's motion for sanctions for violation of the automatic stay. The court has concluded that a willful violation of the stay occurred and that sanctions of actual damages and attorney's fees are appropriate.

**BACKGROUND**

The debtor filed her Chapter 13 Petition December 14, 1989, at which time she was in arrears, inter alia, on her condominium homeowner's association dues and related late charges and fees. The homeowner's association's accounts were handled by Hawthorne Management. After receiving notice of the bankruptcy and the provisions of 11 U.S.C. § 362, Hawthorne continued to send bills for and attempt to collect prepetition dues, late charges and fees.

Two contacts were made by Hawthorne after notice of the bankruptcy. Hawthorne's principal in charge of this account, James Highsmith, testified that he received and read the first notice of this bankruptcy, but that he had no prior experience with bankruptcy and did not appreciate the meaning of the notice. He also made no effort to contact his attorney or otherwise

educate himself about this matter. In short, he simply attached little significance to the notice and paid it no attention. As a result, nothing was done to prevent billing the debtor again, and the first post-petition collection attempt occurred. That prompted a letter from debtor's counsel to Hawthorne. At that point, Highsmith contacted Hawthorne's attorneys and determined that collection efforts must cease. However, because of an error by a new employee, a second collection notice was processed by the firm's computer and delivered to the debtor. That prompted this motion. Hawthorne has now made modifications to its computer system in order to avoid this problem in the future.

#### DISCUSSION

Section 362(h) provides for damages for a "willful" violation of the automatic stay. The court accepts Hawthorne's explanation of its inaction. But, in these circumstances the court concludes that the cavalier approach to the notice received from the court and inattention to the matter amount to a reckless disregard for the Code, which constitutes a "willful" violation of the automatic stay. Ignorance of the provisions of federal law (particularly upon such notice as was provided here) and lack of appropriate diligence cannot be a defense for a stay violation, lest every creditor would be moved to ignorance.

Neither can mere correction efforts suffice to avoid damages for a stay violation. While Hawthorne's efforts are laudable, an actual damage award is necessary to make the automatic stay largely self-enforcing.


### CONCLUSION

The debtor has no actual damages other than lost time at work, minor aggravation and her attorney's fees. Consequently, the court finds and awards actual damages in the amount of \$50.00, and attorney's fees in the amount of \$250.00. The court would normally strike all or part of the claim from which the stay violation arose. But, here the claim is that of the homeowner's association who is an innocent third party in this matter. Consequently, their claim will not be stricken. But, the proof of claim is sufficiently incorrect and undecipherable that the court will require refiling of a proper claim in a format that shows each element of the debts owed and how the claim was calculated.

It is therefore ORDERED that:

1. The debtor's motion for sanctions against Hawthorne Management is granted;
2. The debtor shall have and recover of Hawthorne Management the sums of \$50.00 payable to the debtor, and \$250.00 in attorney's fees payable to David Badger & Associates (both within thirty days of this Order); and
3. Hawthorne Management shall file or cause to be filed a proof of claim on behalf of Latta Square Condominium Association, Inc., in a proper amount and which shows each element of the debts owed and how the claim is calculated.

This the 26<sup>th</sup> day of June, 1990.

  
George R. Hodges  
United States Bankruptcy Judge